

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SERGIO ALVAREZ.

Plaintiff,

V.

MORRIS-SHEA BRIDGE COMPANY,  
INC.,

Defendant.

No. 1:23-cv-01725 JLT BAM

## ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING ACTION

(Doc. 24)

Sergio Alvarez is proceeding *pro se* in this civil action against Morris-Shea Bridge Company, Inc. Morris-Shea removed the action from Fresno County Superior Court based on diversity jurisdiction. (*See generally* Docs. 1-3.) Plaintiff objected to removal. (Doc. 6.)

Morris-Shea filed a motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) or for a more definite statement under Rule 12(e). (Doc. 4.) The Court granted the motion to dismiss without prejudice and with leave to amend, ordering Plaintiff to file an amended complaint within 21 days of the date of service of the Order. (Doc. 16.) The Court advised Plaintiff that the failure to file an amended complaint would result in dismissal of this action without further notice. (*Id.* at 2.)

In lieu of an amended complaint, Plaintiff submitted two letters (or notices) to the Court. (See Docs. 17, 18.) The Magistrate Judge informed Plaintiff that his letters (or notices) could not be construed as an amended complaint in compliance with Court's order. (Doc. 20.) The

1 Magistrate Judge ordered Plaintiff to show cause why this action should not be dismissed for  
2 failure to obey the Court's order and failure to prosecute this action. Plaintiff was directed to file  
3 a written response within 21 days of service. The Court informed Plaintiff that he could comply  
4 with the order to show cause by filing a first amended complaint, which must be clearly titled  
5 "First Amended Complaint." (*Id.* at 3.) The Magistrate Judge advised Plaintiff that the failure to  
6 comply with the show cause order would result in a recommendation that this action be  
7 dismissed. (*Id.*)

8 Plaintiff filed a response to the show cause order. (Doc. 21.) The Magistrate Judge  
9 concluded that the response could not be construed as a First Amended Complaint. (*Id.*) The  
10 Court determined that Plaintiff's response did not show cause why this action should not be  
11 dismissed for failure to obey the Court's order to file an amended complaint or for failure to  
12 prosecute. (Doc. 24 at 2.) Because the deadline for Plaintiff to file his first amended complaint  
13 had passed and Plaintiff had not complied with the Court's orders, the Magistrate Judge issued  
14 Findings and Recommendations that recommended this action be dismissed based on Plaintiff's  
15 failure to obey the Court's orders and for failure to prosecute this action. (*Id.*)

16 The Court served the Findings and Recommendations on all parties and notified them that  
17 any objections were due within 14 days. (Doc. 24 at 4.) The Court also informed the parties that  
18 "the failure to file objections within the specified time may result in the waiver of the 'right to  
19 challenge the magistrate's factual findings' on appeal." (*Id.* at 4-5, quoting *Wilkerson v. Wheeler*,  
20 772 F.3d 834, 839 (9th Cir. 2014).) Plaintiff filed objections on August 15, 2024.<sup>1</sup> (Doc. 27.)  
21 Morris-Shea did not respond to Plaintiff's objections.

22 According to 28 U.S.C. § 636 (b)(1)(c), this Court conducted a *de novo* review of the case.  
23 Having carefully reviewed the entire matter, including Plaintiff's objections, the Court concludes  
24 that the findings and recommendations are supported by the record and proper analysis.  
25 Accordingly, the Court **ORDERS**:

26 1. The Findings and Recommendations issued on August 12, 2024 (Doc. 24) are

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28 <sup>1</sup> Plaintiff also filed a motion for an earlier court date and, later, a motion for a new judge. (See Docs. 26,  
28.) The Magistrate Judge denied both motions. (See Docs. 32, 33.)

1                   **ADOPTED.**

2                   2. This action is **DISMISSED** based on Plaintiff's failure to obey the Court's orders and  
3                   for failure to prosecute this action.  
4                   3. The Clerk of the Court is directed to close this case.

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6                   IT IS SO ORDERED.

7                   Dated: September 18, 2024

  
UNITED STATES DISTRICT JUDGE

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